

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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RITA J. MOOD,

Plaintiff,

-against-

MICHAEL ASTRUE,
Commissioner of Social Security,

Defendant.

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DEARIE, Chief Judge.

MEMORANDUM & ORDER

07 CV 0859 (RJD)

Plaintiff's counsel brings a motion for attorney fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d)(1)(A). Counsel cites to Green v. Bowen, 877 F.2d 204 (2d Cir. 1989), for the proposition that plaintiff should be considered a "prevailing party," despite the Court's dismissal of plaintiff's motion for a writ of mandamus. The Court in Green cited McGill v. Secretary of Health and Human Services, 712 F.2d 28, 30 (2d Cir. 1983), for the proposition that "a social security claimant prevails when it is determined that she is entitled to benefits," and then noted that attorney fees were appropriate because the Social Security Administration ("SSA") had determined that Green was entitled to benefits. In the instant matter, neither the SSA, nor this Court have determined that plaintiff is entitled to benefits. As a result plaintiff cannot be considered a "prevailing party" for the purposes of the EAJA. The motion for attorney fees is therefore denied as premature.

SO ORDERED.

Dated: Brooklyn, New York
February 14, 2008

s/ Judge Raymond J. Dearie

RAYMOND J. DEARIE
United States District Judge